

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANDRES JOAQUIN TAFOYA,

Petitioner,

v.

No. CV 17-0379 RB/CG

RICK MARTINEZ,

Respondent.

ORDER FOR SUPPLEMENTAL BRIEFING

THIS MATTER is before the Court *sua sponte* to order supplemental briefing on Petitioner's *Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254* ("Petition"), (Doc. 1). In his Response to the Petition, Respondent asserts the Petition is "mixed" because Petitioner's ineffective assistance of counsel claims have not been exhausted in the state courts. (Doc. 10 at 10-12). Respondent asks the Court to either dismiss the Petition without prejudice to allow exhaustion of those claims, or order Petitioner to delete his unexhausted claims and decide his remaining claims on the merits. *Id.* at 12.

On February 22, 2018, Petitioner filed a *Notice of Election to Delete Ineffective Assistance of Counsel Claim From Petition for Writ of Habeas Corpus*, (Doc. 27), stating that he elects to delete his claims of ineffective assistance of counsel set forth in paragraphs 47 and 48 of the Petition, and asking the Court to decide his remaining claims. (Doc. 27 at 2-3). Because Petitioner has agreed to dismiss his unexhausted claims, the Court will proceed on the merits of his remaining claims. However, since Respondent has not provided briefing on the merits of those claims, the Court will order supplemental briefing.

IT IS THEREFORE ORDERED that Respondent is to file a Supplemental Brief that addresses the merits of Petitioner's remaining claims by **May 3, 2018**, and Petitioner may file a Reply to the Supplemental Brief by **June 4, 2018**.



THE HONORABLE CARMEN E. GARZA
CHIEF UNITED STATES MAGISTRATE JUDGE